IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 1332 of 1997
in
SPECIAL CIVIL APPLICATION No. 6701 of 1996

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT
and
HON'BLE MR.JUSTICE S.R.BRAHMBHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJKOT DISTRICT PANCHAYAT
Versus
PRAKASH MANSUKHLAL & Ors.

Appearance:
1. LETTERS PATENT APPEAL No. 1332 of 1997
MR HJ NANAVATI for Appellant
MR TR MISHRA for Respondents

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT
and

HON'BLE MR.JUSTICE S.R.BRAHMBHATT
Date of decision: 12/01/2005

ORAL JUDGEMENT (Per : HON'BLE MISS JUSTICE R.M.DOSHIT)

The appellant-Rajkot District Panchayat [hereinafter referred to as, "the Panchayat"] challenges the common judgment and order dated 29th August, 1997 passed by the learned Single Judge in Special Civil Applications No. 6701 of 1996 and No. 8132 of 1996 in so far as the Special Civil Application No. 6701 of 1996 is rejected.

The respondents-workmen were engaged by the Panchayat as daily wage labourers on its Moti Paneli Irrigation Project. The service of the workmen was discontinued since 25th February, 1984. Feeling aggrieved, the workmen raised industrial dispute. The said industrial dispute was referred to the Labour Court, Rajkot and were registered as Reference [LCR] Nos. 231/85 and 245/85 to 251/85. The learned Labour Judge was pleased to partly allow the claim of the workmen. By common judgment and award dated 12th February, 1996, the workmen were ordered to be reinstated in service with continuity and 25% of the backwages. Feeling aggrieved, the Panchayat had preferred the above Special Civil Application No. 6701 of 1996.

The learned Labour Judge had recorded a finding that the workmen had continuously served for 240 days prior to their discharge/discontinuance from service. The Panchayat had failed to follow the procedure as envisaged by Section 25-F of the Industrial Disputes Act, 1947. Therefore, the award. The learned Single Judge has upheld the finding recorded by the Labour Court.

Learned advocate Mr. Nanavati has submitted that the none of the workmen had completed 240 days' service in any of the years they were engaged by the Panchayat. He has relied upon the statement Annexure-E. He has submitted that inspite of the said statement, the learned Labour Judge erred in drawing inference of 240 days' service with respect to each workman. The same error has been committed by the learned Single Judge also.

We are unable to agree with Mr. Nanavati. Except the aforesaid statement, admittedly, the Panchayat did not produce any evidence to indicate the actual number of days each workman had served. In absence of such evidence, the learned Judge cannot be said to have

erred in drawing inference against the Panchayat. Besides, though it was the specific case of the Panchayat that the workmen were engaged for seasonal work, such case was not proved by leading evidence. In absence of any evidence to the contrary, the learned Judge cannot be said to have erred in believing the evidence of the workmen. If the evidence of the workmen is believed and it is held that each workman had served for 240 days in a year, the Panchayat was required to follow the procedure as envisaged by Section 25-F of the Industrial Disputes Act, 1947.

In above view of the matter, we do agree with the learned Single Judge. The appeal is dismissed. There shall be no order as to cost.

{Miss R.M Doshit, J.}

{S.R Brahmbhatt, J.}

Prakash*